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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A146749

v.

**(Sonoma County
Super. Ct. No. SCR662451)**

RODEO VANBLADEL,

Defendant and Appellant.

Carrying three-foot wooden batons, Rodeo Vanbladel and Matthew Andrew Eric Mills (collectively, defendants) ran toward Jimmy Troconis's minivan. One man hit the minivan with a baton. Fearing he would be robbed, Troconis drove away, lost control of his minivan, and crashed into a parked car owned by Harry Leseur. Vanbladel pled no contest to assault likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)),¹ and admitted two prior serious felony convictions (§§ 667, subs. (d), (e), 1170.12, subs. (b), (c)). The trial court sentenced Vanbladel to state prison and later ordered restitution pursuant to section 1202.4.

Vanbladel appeals, contending the restitution award is improper because: (1) Troconis's minivan was not damaged as a result of the assault; and (2) Leseur was not a

¹ All undesignated statutory references are to the Penal Code.

“victim” within the meaning of section 1202.4. We agree that Leseur was not a “victim” under section 1202.4. We modify the judgment to strike the award of \$12,435.35 in restitution awarded to Leseur pursuant to section 1202.4, and to correct the amount of restitution awarded to the Victim Compensation Board. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The People charged defendants with assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)) and felony vandalism (§ 594, subd. (a)) and alleged Vanbladel had two prior convictions (§§ 667, subds. (d), (e), 1170.12). The facts underlying the incident are from the preliminary hearing transcript.

The Incident

Troconis was delivering newspapers from his minivan in Santa Rosa when he saw a white pickup truck coming out of a driveway. Two men got out of the truck. They were carrying three-foot batons and they ran toward Troconis. Troconis thought the men were going to rob him, so he began to drive away. The men shouted expletives at Troconis; one man hit Troconis’s van with the baton. At that point, Troconis lost control of the minivan and hit a parked car owned by Leseur.

Troconis got out of his van, saw the men were following him, and began to run. The men followed Troconis in their truck, and later chased him on foot. When the men caught up to Troconis, they hit him in the head. Troconis fell to the ground and the men kicked him in the ribs.² Troconis had a bloody nose, bruising on his face and ear, and rib pain. Troconis’s minivan — which cost him \$5,000 — was a “total loss” and could not be repaired.

At the conclusion of the preliminary hearing, the court held defendants to answer the charge of assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)).

Plea, Sentence, and Restitution

² Troconis identified Mills. He could not identify the other man because he “was running for [his] life.” Troconis testified both men hit and kicked him and that Mills hit and kicked him while the other man grabbed his jacket and held him. Mills told a police officer Vanbladel struck the van’s occupant “many times.” The officer found a three-foot “wooden baton” in the road near Vanbladel’s home.

Vanbladel pled no contest to assault likely to produce great bodily injury (§ 245, subd. (a)(4)) and admitted two prior serious felony convictions (§§ 667, subds. (d), (e), 1170.12, subds. (b), (c)). He stipulated to a factual basis for the plea “based on the preliminary hearing transcript, the papers in the file, and court records” and agreed the court could “consider the dismissed charges” when ordering restitution. The court sentenced Vanbladel to four years in state prison and ordered restitution to “be collected and determined at a later time[.]”

At an October 2015 restitution hearing, the prosecution requested the following restitution: (1) \$3,255 to Troconis for the damage to his minivan; (2) \$12,435.25 to Leseur for the damage to his car; and (3) \$208.51 to the Victim Compensation Board. The prosecutor noted defendants chased “Troconis, who tried to drive away, and in the process crashed into another vehicle belonging to . . . Leseur. [¶] After that collision, . . . Troconis fled on foot and then was eventually caught by the defendants and . . . beaten, punched, and kicked, and . . . the whole transaction of events” led to the assault charge.

Defendants argued they should not be ordered to pay restitution to Troconis or Leseur because the vehicle damage occurred before the assault. As counsel for Vanbladel explained, “There was a [vandalism] count that was associated with the car damage. It was discharged. There was no charge of assault related to the car incident itself. So there’s zero evidence that at the time that the defendants came into the street and did whatever they did, precipitating allegedly a car accident, that they had the intent to assault the driver of the car at all.”

The court disagreed, concluding the assault “was a continuous course of conduct that started” when defendants “terrif[ied] the victim, trying to chase him down. He tried to escape in his van, crashed the van. They then tracked him down on foot and beat him up. They are responsible for the restitution for the [van] and any medical and other bills of the victim. It was a continuous course of conduct and all part of the assault.” The court ordered defendants to pay joint and several restitution of \$15,898.76.

At a November 2015 hearing to determine whether third party insurance payments altered the amount of restitution, the prosecutor listed restitution in the amounts of

\$3,255, \$12,435.25, and \$132.72, and the court “confirm[ed] those amounts.” The November 3, 2015 minute order requires defendants to pay joint and several restitution of \$3,255 to Troconis, \$12,435.25 to Leseur, and \$132.72 to the Victim Compensation Board.

DISCUSSION

Vanbladel contends court erred by awarding restitution pursuant to section 1202.4. Section 1202.4, subdivision (a)(1) declares a legislative intent “that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.” Pursuant to section 1202.4, subdivision (f), “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states them on the record. . . .” “To the extent possible, the restitution order shall . . . identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim . . . for every determined economic loss incurred as the result of the defendant’s criminal conduct. . . .” (§ 1202.4, subd. (f)(3); see also *People v. Stanley* (2012) 54 Cal.4th 734, 737.)

I.

Restitution for the Damage to Troconis’s Minivan Was Proper

Vanbladel contends the court abused its discretion by awarding Troconis \$3,255 in restitution pursuant to section 1202.4. According to Vanbladel, the assault was premised on the beating defendants gave Troconis *after* he crashed his minivan and therefore “does not relate” to his purportedly “innocent conduct” in approaching Troconis’s van in a menacing manner, with a wooden baton. Vanbladel cites no cases supporting his argument.

The scope of a trial court’s power “to order restitution turns on whether the court imposes judgment or instead places the defendant on probation.” (*People v. Walker* (2014) 231 Cal.App.4th 1270, 1274 (*Walker*).) Where — as here — a trial court

sentences a defendant to state prison, section 1202.4 “‘limits the scope of victim restitution to losses caused by the criminal conduct for which the defendant sustained the conviction.’” (*People v. Rahbari* (2014) 232 Cal.App.4th 185, 190, quoting *People v. Woods* (2008) 161 Cal.App.4th 1045, 1050 [restitution ordered pursuant to section 1202.4 is limited to “losses arising out of the criminal activity that formed the basis of the conviction”], *id.* at p. 1049.)

For purposes of section 1202.4 restitution, courts consider direct and proximate causation when determining whether an economic loss was the “result of” a defendant’s criminal acts. (*People v. Jones* (2010) 187 Cal.App.4th 418, 424-425.) Direct causation is present when, but for a defendant’s criminal act, no loss would have occurred. (*Id.* at p. 425.) Here, there is a direct causal chain between Vanbladel’s criminal conduct and the damage to Troconis’s minivan. Armed with wooden batons, defendants ran toward Troconis’s minivan. Afraid defendants would rob him, Troconis drove away; as he did so, defendants shouted expletives at Troconis and one defendant hit the minivan with a baton. At that point, Troconis lost control of his van and struck a parked car. But for defendants’ conduct, Troconis would not have driven away, lost control of his car, and crashed into the parked car. Defendants’ conduct — which was more than “negligible or theoretical” — also proximately caused Troconis’s economic loss. (See *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 978; *People v. Foalima* (2015) 239 Cal.App.4th 1376, 1397 [“criminal conduct by defendant and his accomplices was a substantial factor and the proximate cause of [the victim’s] damages,” entitling her to restitution].)

People v. Lai (2006) 138 Cal.App.4th 1227 (*Lai*) does not alter our conclusion. In that case, a jury convicted defendants of welfare fraud occurring over a 15-year period, but the restitution award included \$11,230 in fraudulently obtained aid “*before the crimes of which [the defendants] were convicted.*” (*Id.* at p. 1246.) The appellate court invalidated the award of \$11,230 in restitution, explaining “section 1202.4 does not support that portion of the restitution order of [the] sentence attributable to fraudulently obtained aid before the charged period.” (*Id.* at p. 1249.) *Lai* is distinguishable. In *Lai*, a

jury convicted the defendants, necessarily limiting the restitution award to the losses resulting from the “criminal conduct for which the defendant [was] convicted.” (*Id.* at p. 1247.) Here, Vanbladel pled guilty to the assault charge and agreed the court could consider the entire factual background when awarding restitution. Moreover — and in contrast to *Lai* — Vanbladel was not charged with crimes occurring over a discrete period of time.

The court did not abuse its discretion by awarding \$3,255 in restitution pursuant to section 1202.4 for the damage to Troconis’s minivan.

II.

Leseur is not a “Victim” under Section 1202.4 and is not Entitled to Restitution

Vanbladel argues the court erred by awarding restitution of \$12,435.25 to Leseur because he is not a “victim” within the meaning of section 1202.4. We agree.³

Crime victims have a state constitutional right to restitution from “persons convicted of the crimes causing the losses they suffer.” (Cal. Const., art. I, § 28, subd. (b)(13)(A); *Walker, supra*, 231 Cal.App.4th at pp. 1273-1274.) As noted above, “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims[.]” (§ 1202.4, subd. (f).) The standard of review of a restitution order is abuse of discretion, but “‘a restitution order “resting upon a “demonstrable error of law”” constitutes an abuse of the court’s discretion.”” (*People v. Duong* (2010) 180 Cal.App.4th 1533, 1537, quoting *People v. Millard* (2009) 175 Cal.App.4th 7, 26.)

Under the plain language of section 1202.4, “the court may order restitution only to a ‘victim.’” (*People v. Slattery, supra*, 167 Cal.App.4th at p. 1095.) “A victim is the *object* of a crime. [Citations.] “‘Actual’” or “‘direct’” victims are ‘the real and

³ The People do not claim Vanbladel forfeited this argument by failing to raise it in the trial court. Vanbladel’s claim that Leseur is not a “victim” under section 1202.4 is not forfeited because it presents a “legal question that is ‘clear and correctable’ by an appellate court without reviewing factual circumstances.” (*People v. Slattery* (2008) 167 Cal.App.4th 1091, 1095, quoting *People v. Welch* (1993) 5 Cal.4th 228, 235-236.)

immediate objects’ of the offense. [Citation.] Thus, people or entities are entitled to restitution when the crime was committed against them” (*People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1086.)⁴ Here, Vanbladel plead no contest to assault with force likely to produce great bodily injury in violation of section 245, subdivision (a)(4). The “*object*” of Vanbladel’s crime was Troconis, and the crime was “committed against [him].” (*Saint Amans, supra*, 131 Cal.App.4th at p. 1086.) Leseur’s car was damaged by the accident set in motion by defendants’ conduct, but Leseur was not the “*object*” of defendants’ assault. As a result, he is not a “victim” under section 1202.4 and is not entitled to restitution. (See, e.g., *People v. Moloy* (2000) 84 Cal.App.4th 257, 260.)

Citing *People v. Ortiz* (1997) 53 Cal.App.4th 791 (*Ortiz*), the People urge us to give ““a broad and flexible meaning”” to the term “victim.” In *Ortiz*, the defendant possessed counterfeit cassette tapes; a trade association representing the record companies whose music was pirated helped “find and destroy counterfeit versions” of the “recordings and assist[ed] in the prosecution[.]” (*Id.* at p. 794.) The trial court awarded restitution to the trade association and the appellate court affirmed. It determined the trade association was a “direct victim” under a former version of section 1202.4 because the association represented the record labels, the objects or “direct victims of the defendant’s crime.” (*Id.* at p. 795.) *Ortiz* noted the term “victim” has been given “a broad and flexible meaning” (*id.* at p. 797) and that “treating [the trade association] as a direct victim is consistent with the language of the statute and the clearly expressed public policy of this state.” (*Id.* at p. 796.)

We agree that “the categories of covered ‘victims’” in section 1202.4, subdivision (k) “are to be broadly and liberally construed” (see *People v. Runyan, supra*, 54 Cal.4th at p. 865) but that general principal does not compel the conclusion Leseur is a victim under section 1202.4. Here, the People do not contend Leseur is a “direct victim” under

⁴ Section 1202.4, subdivision (k) lists “victims” as including, among others, “the actual victim[’s]” immediate surviving family, and entities such as corporations and business trusts which are “direct victim[s]” of a crime. (§ 1202.4, subd. (k)(1), (2); see *People v. Runyan* (2012) 54 Cal.4th 849, 856.)

subdivision (k) of the statute. Moreover, *Ortiz* is distinguishable. In that case, the trade association represented the record companies whose music the defendant stole — in other words, the association “stood in the shoes” of the music labels, the objects or direct victims of the crime. (*Ortiz, supra*, 53 Cal.App.4th at pp. 794, 796 [trade association was music companies’ “designated representative”].) Here, Troconis was the object of the defendants’ assault, and there is no relationship between Troconis and Leseur. As a result, Leseur was not the “object” of defendants’ crime and he is not entitled to restitution.

The People’s reliance on *People v. O’Neal* (2004) 122 Cal.App.4th 817 (*O’Neal*) is also misplaced. There, a jury convicted the defendant of sexually molesting a child and the victim’s brother received “psychological counseling because of emotional damage he suffered as a result of the crime.” (*Id.* at p. 818.) The appellate court determined the victim’s brother was a victim under section 1202.4, subdivision (k), and the agency that provided the counseling was entitled to restitution. (*O’Neal, supra*, 122 Cal.App.4th at p. 819.) The *O’Neal* court noted “victim” under section 1202.4, subdivision (k) includes family members, and that the brother “suffered emotionally and was thus a victim.” (*O’Neal, supra*, 122 Cal.App.4th at p. 821.) Additionally, the defendant conceded restitution for a derivative victim was appropriate. (*Ibid.*, quoting Gov. Code, § 13951, subd. (c).) Here, the People do not argue Leseur is a “victim” under section 1202.4, subdivision (k), and Vanbladel does not concede Leseur is a “derivative victim” under the Government Code.⁵

We conclude Leseur is not entitled to \$12,435.25 in restitution because he is not a “victim” within the meaning of section 1202.4.

⁵ Government Code section 13951, subdivision (c) defines a ““derivative victim”” as “an individual who sustains pecuniary loss as a result of injury or death to a victim.” As relevant here, the definition of “derivative victim” includes any person who at the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim, or was living in the victim’s household, or was another family member who witnessed the crime. (Gov. Code, § 13955, subd. (c).) Section 1202.4’s definition of “victim” is identical to Government Code section 13955’s definition of ““derivative victim.””

III.

The November 3, 2015 Minute Order Must Be Corrected Regarding the Victim Compensation Board's Restitution

At the October 2015 restitution hearing, the court awarded the Victim Compensation Board \$208.51 in restitution pursuant to section 1202.4. At a November 2015 hearing, however, the prosecutor mistakenly stated the restitution to the Victim Compensation Board was \$132.72, not \$208.51. The court “confirm[ed]” the amount, and, as relevant here, the November 3, 2015 minute order awarded restitution of \$132.72 to the Victim Compensation Board.

The parties agree the November 3, 2015 minute order should be corrected to conform to the court’s oral pronouncement at the October 2015 restitution hearing. We therefore order the trial court to correct the minute order. (*People v. Mitchell* (2001) 26 Cal.4th 181, 188.)

DISPOSITION

The November 3, 2015 minute order is modified to: (1) strike the award of \$12,435.25 in restitution awarded to Harry Leseur pursuant to section 1202.4; and (2) award the Victim Compensation Board restitution of \$208.51. As modified, the judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.